

THE NASA FLEXIBILITY ACT OF 2004

Frequently Asked Questions

February 23, 2006

General

Q1. Were NASA's unions involved in the Agency's efforts to obtain the flexibilities contain in the NASA Flexibility Act of 2004?

A1. Yes. The American Federation of Government Employees (AFGE) and the International Federation of Professional and Technical Engineers (IFPTE) are accorded national consultation rights with NASA. Throughout the process of pursuing legislation to address the Agency's workforce needs, NASA provided the national representatives of these unions with information regarding the legislative proposals NASA was developing and met with them on several occasions to discuss the proposals in more detail. IFPTE was actively involved, and its letter of endorsement of the bill to the House Science Committee in the summer of 2003 was helpful in moving the legislation forward.

In anticipation of enactment of the legislation, NASA formed a human capital legislation implementation team in August 2003 to accomplish the work that must be done in order for NASA to use the new authorities. The national representatives of AFGE and IFPTE were invited to participate; IFPTE designated a NASA employee to serve on the team.

Q2. Will NASA continue to discuss or negotiate the new human capital provisions with the unions?

A2. Yes. NASA will continue to consult with the national representatives of the AFGE and IFPTE. The consultation process provides the unions an opportunity to ask questions and provide comments and recommendations on the implementing policies. In addition to national consultation, Centers will give their local unions the opportunity to bargain on procedures for implementing the new human capital provisions and on any specific provisions that are in conflict with provisions in their current agreements.

Q3. Are any of the provisions in the NASA Flexibility Act of 2004 relevant to current NASA civil servants? Or are they focused exclusively on recruiting new employees?

A3. The new flexibilities include provisions relevant to current NASA employees as well as provisions designed to enhance NASA's ability to hire new employees. Some provisions have features that are applicable to both current and new employees. (See the chart at the end of this document.)

Provisions that can affect current NASA employees are: relocation bonuses, retention bonuses, qualifications pay, pay authority for critical positions, limited appointments to Senior Executive Service (SES) positions, and annual leave enhancements for senior

level positions. The term appointment authority is relevant to current NASA term employees.

Provisions relevant to new hires: recruitment and redesignation bonuses, term appointment authority, Distinguished Scholar Appointment authority, Science and Technology Scholarship Program, travel and transportation expenses for new appointees, and the annual leave enhancement. The provisions pertaining to critical pay authority and limited appointments to SES positions can be used to hire new employees.

Q4. When was NASA able to use the new human capital authorities?

A4: The Act states that 90 days in advance of exercising any of the new authorities that are being incorporated into title 5 of the United States Code, NASA must submit a workforce plan to Congress that provides specific information on workforce issues relevant to using the authorities. In addition, before the plan is submitted to Congress it must be provided to NASA unions for comment and submitted to the Office of Personnel Management (OPM) for approval.

The plan was provided to Congress on April 8, 2004. This means that the Agency was able to use the new authorities as of July 8, 2004.

There is one provision in the NASA Flexibility Act of 2004 that represents an amendment to the NASA Space Act, rather than a provision that will be incorporated in title 5. This is the provision that increases the maximum rate of pay for NASA Excepted (NEX) employees from level IV of the Executive Schedule to level III of the Executive Schedule. This amendment was effective on the first day of the first pay period after the date the law was enacted.

Q5. The first NASA Workforce Plan, dated March 26, 2004, provides a list of competencies on which NASA is focusing its recruitment, retention, and development efforts. The plan states that these are the Agency's most significant competency requirements and represent NASA's critical needs. If NASA's competency needs change, will the Workforce Plan be modified to reflect such changes?

A5. Yes. Competency needs will not remain static over time. Changes in programs, attrition patterns, and labor market dynamics can affect NASA's critical competency needs. The Act recognizes that NASA may have a need to modify the workforce plan. When that occurs, NASA will submit the modified plan to Congress and to NASA employees. Prior to doing so, employee representatives will be given an opportunity to comment, and the plan will be submitted to the Office of Personnel Management for approval. The current version of the Workforce Plan, Version 1, is dated June 5, 2005. It contains an updated list of critical competencies.

Q6. The workforce plan NASA submits to Congress must describe the Agency's "critical needs" and how the new authorities would address those needs. Does this mean

that the authorities in the NASA Flexibility Act of 2004 can be used *only* in connection with positions that are identified with critical needs (as defined in the workforce plan)?

A6. No. With two exceptions, the authorities may be used—as appropriate and consistent with the language and intent of the legislative provisions and implementing regulations—to address competency needs that do not necessarily meet the criteria of “critical needs.” The two exceptions involve paying recruitment, redesignation, relocation, and retention bonuses at certain monetary levels and the critical pay authority.

Q7. The NASA Flexibility Act of 2004 provides new flexibilities to NASA that will be incorporated into title 5 of the United States Code—such as enhanced and new recruitment and retention incentives and streamlined, more flexible hiring authorities. Can any of those flexibilities be used in hiring or compensating a political appointee?

A7. No, the Act specifically states that those authorities may not be exercised with respect to a political appointee.

Q8. Do any of the provisions in the Act modify existing statutes or regulations pertaining to employee performance or conduct problems? For example, does the Act revise current rules for removing a NASA employee from the Federal service?

A8. No. No provision in the Act pertains to disciplinary actions as related to performance or conduct.

Recruitment, redesignation, relocation, and retention bonuses

Q1. The Federal Workforce Flexibility Act of 2004 (Public Law 108-411) replaced the former Federalwide recruitment, relocation, and retention bonus authorities with more flexible, enhanced authorities – now called recruitment, relocation, and retention incentives. Are these authorities available for NASA to use?

A1. Yes. Note, however, that although the Federalwide incentives are very similar to the NASA bonus authorities, there are differences. Centers must follow the guidance in the NASA Plan for Federalwide Recruitment, Relocation, and Retention Incentives when using those authorities. The information in these Q&A’s applies only to the authorities in the NASA Flexibility Act of 2004.

Q2. Who makes the decision as to which bonus provisions are used?

A2. The supervisor and the Human Resources Office, working together, will determine which bonus provisions are most appropriate to recommend for a particular situation. NASA’s implementing regulations will specify the approval authority.

Q3. The existing Federal regulations address three categories of bonuses: recruitment bonuses, relocation bonuses, and retention allowances. The NASA Flexibility Act of 2004 contains a new category—redesignation bonuses. Can you explain what this new category covers?

A3. A redesignation bonus is paid to an *employee of another Federal agency* in order to provide an incentive for that person to accept a position at NASA. (Current regulations do not permit bonuses to be used to attract employees from other Federal agencies.) And, unlike the concept of relocation bonuses, redesignation bonuses can be paid to an individual in the same geographic area. Simply put, a redesignation bonus is comparable to a recruitment bonus paid to an individual who is being hired from outside the Federal sector—the difference is that the redesignation bonus is paid to someone who already works for the Federal Government. For example, a redesignation bonus could be paid to an Army employee working at Redstone Arsenal as an incentive to accept a position at Marshall Space Flight Center.

Q4. Is an individual who accepts or holds a position that is not identified as meeting a critical need eligible for a recruitment, redesignation, relocation, or retention bonus under the NASA Flexibility Act of 2004?

A4. Yes, although the bonus provisions for individuals in non-critical need positions are more limited than the bonus provisions for those in critical need positions. The bonus amounts for individuals in non-critical need positions are capped at 25% of the employee's annual rate of basic pay, excluding locality pay. The enhancement involves *flexibility in the way the money is paid*; bonuses may be paid as a lump sum, in installments, or in some combination of the two. The final decision on the payment method rests with management, but employee preferences will be given strong weight in the decision process.

Q5. Are individuals who have been offered positions associated with critical needs automatically entitled to recruitment, redesignation, or relocation bonuses if they meet the eligibility criteria? Are current NASA employees who are in positions that meet the critical need criteria automatically entitled to retention bonuses if they meet the eligibility criteria?

A5. An individual does not have an entitlement to a bonus. The decision to offer a bonus is based on a documented recruitment or retention need. In addition, even when a bonus is determined to be appropriate, the individual has no entitlement to a specific amount.

Q6. I have been told that only 25% of the enhanced bonuses paid in any fiscal year can be given to supervisors/managers. How is this calculated—by the *number* of bonuses given or the *dollar amount* given? And are all four categories of bonuses considered together or by individual bonus category in making the calculation?

A6. The percentage refers to the dollar amount of bonuses paid, not the number of bonuses. In calculating the amounts, you consider recruitment, redesignation, and relocation bonuses in a single category. Retention bonuses are considered separately.

So, if NASA pays \$400,000 total in recruitment, redesignation, and relocation bonuses in a fiscal year, no more than \$100,000 of that amount can represent bonuses given to supervisors/managers. If NASA pays \$100,000 in retention bonuses in a fiscal year, no more than \$25,000 of that amount can represent retention bonuses given to supervisors/managers.

Q7. If I am calculating the ratio for this fiscal year, are the monetary amounts paid under the Federalwide bonus authority considered when determining the 25/75% ratio of bonuses to supervisors/managers versus other employees?

A7. No. The 25/75 ratio requirement pertains only to bonuses paid under the provisions of the NASA Flexibility Act of 2004. Bonus amounts paid under the Federalwide authority are not to be considered in assessing compliance with the 25/75 ratio.

Q8. As you state, the law requires that no more than 25% of the total amount in bonuses awarded in any fiscal year may be awarded to supervisors/managers. It is possible for an employee to receive a bonus paid in installments over several fiscal years. In calculating the ratio for a specific fiscal year, do I consider the total amount of the bonus to be paid over the life of the service agreement, or just the amount paid out in the fiscal year?

A8. Since the law requires that we report to Congress the total amount *paid during the fiscal year*, the ratio is to be calculated on the basis of money paid out in the fiscal year.

For example, suppose a Center has negotiated a \$15,000 redesignation bonus to hire an individual for a supervisory position, with \$8,000 to be paid in FY 2005 and the balance of \$7,000 to be paid in FY 2006. In calculating the 25/75% ratio for FY 2005, the figure of \$8,000 is included in determining the total for the amount of bonus money awarded to supervisors/managers in the recruitment/redesignation/relocation category. This also means that \$7,000 must be included in determining the total bonus money awarded to supervisors/managers in FY 2007 in that category. Centers must be careful in negotiating schedules for payments of bonuses to ensure that they do not put themselves in a position of violating the 25/75 ratio in future fiscal years.

Q9. On October 30, 2004, the Federal Workforce Flexibility Act was signed into law. This Act contains a provision for enhanced recruitment, relocation, and retention bonuses. It actually replaces the existing sections 5753 and 5754 of title 5, United States Code. Can NASA use the new Federalwide authority to pay bonuses after OPM issues their implementing regulations?

A9. Yes, These authorities became available to use on June 23, 2005 when the NASA Plan for use of the new Federalwide incentives was issued, Centers are required to meet local union obligations prior to implementing the provisions of that Plan and using the new authorities.

Term appointments

Q1. Upon enactment of the NASA Flexibility Act of 2004, will NASA term employees be eligible to be converted to permanent appointments under this provision without any further action?

A1. No. The Act provides very specific criteria for conversion eligibility.

In order to be converted to permanent, a term employee must meet all of the following **basic eligibility criteria for conversion**:

- The individual's current term appointment must have been made from a competitive announcement stating that the person(s) selected might be converted to a permanent appointment;
- The individual must have at least two years of current continuous service under a term appointment in the competitive service; and
- The individual's performance must be at least fully successful.

Employees who meet the basic criteria may be **non-competitively** converted to a permanent position within NASA if that position is:

- In the same geographic location;
- In the same occupational series; and
- Has no greater promotion potential than the term position for which the person competed.

Employees who meet the basic criteria may be converted to permanent status if selected for a permanent position within NASA under **internal competitive procedures** (i.e. merit promotion procedures.) In these cases, the position may be in a different geographic location, a different occupational series, and have greater promotion potential.

Q2. The NASA Flexibility Act of 2004 stipulates that one of the criteria for conversion to permanent employment is that the employee must have served "at least two years of current continuous service under a term appointment in the competitive service." Does this service have to have been as a result of a vacancy announcement that specifically stated there was potential for subsequent conversion?

A2. No, the requirement is much more flexible than that. The service need not stem from an announcement that offered a conversion opportunity. For example, we might have a situation in which an individual competed and was selected for a NASA term position 18 months ago (before the passage of the NASA Flexibility Act of 2004). He then might compete for another term position that offers conversion potential. This term employee would meet the requirement for two years of current continuous service after he has been in the new position for six months. Also, note that it is not necessary for the service to have been performed at NASA. Otherwise creditable service may be used to meet this requirement regardless of the Federal agency in which the work was done.

Q3. Will it be possible to extend term appointments of current employees for up to six years without further competition?

A3. Yes, assuming that nothing else about the appointment changes, and that there are no qualified and available Interagency Career Transition Assistance Program (ICTAP) eligibles. This is comparable to situations in which agencies request approval from the Office of Personnel Management (OPM) for case-by-case extensions of the four-year limitation on term appointments. If OPM approves such a request, the Federal agency is not required to make the employee compete again for the position. There are two important points to remember, however. First, the total length of time of the initial appointment combined with the extension(s) cannot exceed six years. Second, the extension does not confer conversion eligibility.

Q4. I am a term employee on a four-year appointment that will end on October 1, 2004. How much longer can my appointment be extended under the new authority in the Act?

A4. Your appointment can be extended for a maximum of two years beyond that expiration date, so that the initial appointment and the extension do not exceed a total of six years. Therefore, your appointment can be extended only up to October 1, 2006.

Q5. How will term employees be considered when they compete under competitive placement announcements?

A5. Term employees who are eligible to compete under competitive placement procedures will be evaluated just like any other NASA permanent employee competing under the announcement and will be entitled to equal (but not greater) consideration in the selection process.

Q6. Does the new six-year limitation on term appointments apply to individuals who are converted from the Student Career Experience Program (SCEP) to term positions?

A6. Yes, you may convert a SCEP employee to a term appointment for a maximum of six years, and still retain the option to convert the employee to a career or career conditional appointment.

Pay authority for critical positions

Q1. If a position meets the criteria for “critical need” under NASA’s Workforce Plan, does that make it eligible for critical position pay?

A1. Not necessarily; although the terminology is similar, the standards are different. The authority for critical position pay, which under the Act could range up to the salary of the Vice President (\$201,600 in 2004), is reserved for rare instances where a position requires the expertise of an extremely high level in a scientific, technical, professional, or administrative field, and which is critical to a Federal agency’s successful accomplishment of an important mission. Fewer than ten positions in the Federal Government currently hold this distinction.

Q2. Does NASA have any positions under this current Governmentwide authority?

A2. Yes, NASA recently received critical pay authority for one scientific position.

Assignments of intergovernmental personnel

Q1. Can someone be given an initial Intergovernmental Personnel Act (IPA) assignment covering the full six-year period now available under the NASA Flexibility Act of 2004?

A1. No. As in the past, the initial assignment will be for a maximum of two-years; as appropriate, the individual may then be given one or more extensions not to exceed a total of an additional four years.

Q2. Does this provision allowing for an extended assignment period apply to both individuals coming to NASA and NASA employees taking assignments outside the agency?

A2. Yes, the provisions apply to both incoming and outgoing assignments.

Q3. The IPA assignment of an individual in my organization will reach the 4-year maximum soon. Will I be able to extend the assignment beyond that 4-year limit under the new authority in the NASA Flexibility Act of 2004?

A3. It depends on whether the 4-year limit is reached before or after the date NASA is permitted to exercise the authorities in the Act. If the employee has served 4 years under an IPA assignment prior to the date the Agency can exercise the new authorities, the assignment cannot be extended. If the employee has not reached the 4-year limit as of the date NASA can use the new authorities, then the IPA assignment can be extended. The total length of time served under the original assignment and subsequent extensions cannot exceed 6 years.

Distinguished Scholar Appointment authority

Q1. Can this authority be used to make temporary or term appointments?

A1. The Distinguished Scholar Appointing authority may be used only to make career or career-conditional appointments, which are permanent.

Q2. Can this authority be used to fill any permanent position, such as a procurement analyst position?

A2. The Distinguished Scholar provisions may be used only to fill positions at grades GS-07 through GS-12 that are covered by OPM's Group Coverage Qualification Standard for Professional and Scientific Positions. This standard includes occupations in science, engineering, mathematics, computer science, accounting, auditing, and other professional fields for which a bachelor's or higher degree is fully qualifying. It does not cover administrative positions in fields such as human resources, budget, and procurement.

Q3. Many NASA positions in the covered occupations have a full performance level above GS-12. Does this mean that the Distinguished Scholar Appointment authority cannot be used to fill those positions?

A3. The grade level limitation in that provision refers to the highest level at which the position initially is filled. It does not limit the full performance level of the job. For example, a Center may have a Computer Scientist position with a full performance level of GS-14. If the supervisor wants to fill the position at grade GS-13 or GS-14, the Distinguished Scholar authority may not be used. If the supervisor elects to fill the job at the GS-11 level with a career ladder up the GS-14 level, the Distinguished Scholar authority may be used.

Q4. What processes will Centers follow in using the Distinguished Scholar Appointment authority?

A4. NASA STARS will be used to advertise vacancies and refer candidates for positions filled under this authority—just as it is used to fill other permanent competitive service positions. The vacancy announcement will clearly state that Distinguished Scholar provisions are being used, and describe the specific qualification requirements. The announcement also must tell applicants that ICTAP eligibles will receive priority consideration, and that veterans' preference applies to Distinguished Scholar appointments.

Q5. The NASA Flexibility Act of 2004 states that candidates must meet the relevant OPM qualification standard. Does that mean that AST qualification requirements won't apply?

A5. Candidates must, at a minimum, meet OPM qualification requirements. This does not prohibit us from using additional qualification requirements such as AST. However, in a rare case where a candidate meets AST qualifications, but does not meet the OPM qualification requirements, that individual may not be appointed using the Distinguished Scholar authority.

Q6. If a manager chooses to advertise a vacancy using the Distinguished Scholar Appointing authority, can he or she also consider candidates from other sources?

A6. Yes. The manager and the Human Resources specialist, working together, determine what is necessary to identify an appropriate number of highly qualified candidates. A single vacancy may be advertised simultaneously, using other selection avenues such as merit promotion and delegated examining. The selecting supervisor may select from the source that best meets his or her needs.

Q7. Veterans' preference and the ICTAP priority requirements apply to hiring under the Distinguished Scholar Appointment authority. Can veterans and ICTAP applicants be considered for appointments under this authority if they do not meet the academic requirements?

A7. No. Veterans and ICTAP applicants must meet all of the requirements to be considered under the Distinguished Scholar Appointment authority, including all academic requirements and having received the qualifying degree within two years of the appointment.

Q8. The Distinguished Scholar provisions provide the option of either referring all candidates who meet the basic qualifications and eligibility requirements, or doing further rating and ranking so as to refer only highly qualified candidates. At what point is that decision made?

A8. The decision about how candidates will be evaluated must be made prior to the posting of the vacancy announcement. Because applicants are entitled to know how the process will work, the vacancy announcement must state specifically which approach will apply. The decision should be made by the selecting official and the HR specialist, working together, and should consider factors such as the grade and series of the position, the probable size of the candidate pool, and other similar issues. The NASA STARS system is being modified to provide standard language for vacancy announcements to address Distinguished Scholar provisions.

Q9. If we elect to refer all applicants who meet basic qualifications and eligibility requirements, may we still require Interagency Career Transition Assistance Program (ICTAP) candidates to meet a "well qualified" standard?

A9. It is not appropriate to require ICTAP eligibles to meet a substantially higher standard than that to which other applicants are being held. If a decision is made to screen only for basic qualifications and eligibility, any ICTAP candidate who meets that

level is entitled to priority referral. If further rating and ranking is done, ICTAP candidates must be found well-qualified for the position in order to be referred.

Q10. NASA's interim policies regarding Distinguished Scholar appointments state that applicants at the GS-7 level must have a cumulative GPA of 3.0 or higher (on a 4.0 scale) and a GPA of 3.5 or higher for courses in the field of study required to qualify for the position. This is similar to OPM's criteria for qualifying at the GS-7 level based on superior academic achievement. However, the superior academic achievement criteria also permits individuals to qualify based on class standing or election to one of the designated national scholastic honor societies. Can a graduate be hired under the Distinguished Scholar appointment authority at the GS-7 level if he/she fails to meet the GPA requirements but meets the superior academic achievement criteria based on class standing or election to one of the honor societies?

A10. No. The two authorities are distinct. The Superior Academic Achievement criteria is not a hiring authority; it is part of the qualification standards established by the Office of Personnel Management. The Distinguished Scholar Appointment authority is a hiring authority, with specific qualifying criteria stipulated in law that cannot be "waived" by regulatory guidelines. Unlike the "Superior Academic Achievement" criteria for qualifying at the GS-7 level, there are no alternative ways of qualifying for a Distinguished Scholar Appointment based on class standing or election to a national scholastic honor society.

Travel and transportation expenses of certain new appointees

Q1. The NASA Flexibility Act of 2004 authorizes payment of travel, transportation, and relocation expenses for new hires appointed to non-temporary positions. Does this change mean that *all* newly appointed employees would receive travel and transportation benefits?

A1. No. An authorizing official must first determine that payment of travel and transportation benefits is in the interest of the government. However, once a decision is made to pay the enhanced travel and transportation benefits under this new authority, then the benefits received by the newly appointed employee generally are equivalent to those received by current employees being transferred to another duty location.

Q2. May the travel authorizing official reduce or eliminate some of the travel benefits for newly appointed employees?

A2. No. If travel is authorized for a newly appointed employee then he/she must receive the same benefits as a current employee being moved to a new duty location. However, there are some discretionary relocation programs (e.g., home purchase/resale) for which NASA may determine employee eligibility.

Annual leave enhancements

Q1. I have been working in the private sector for several years and I am considering accepting a job with NASA in my field. NASA's legislation authorizes nonfederal experience to be creditable toward a new employee's annual leave accrual rate. Can work experience of any kind be creditable?

A1. Not all work experience is creditable. The nonfederal experience must be in the same line of work and require similar qualifications as the NASA job for which you are being hired.

Q2. I have several years of qualifying nonfederal service. If I accept a NASA job must all of that service be credited for enhanced leave purposes?

A2. No. The enhanced leave provision is a recruitment incentive. It will be authorized only if needed to obtain the required skills and competencies. In making this determination the authorizing official may credit all, only a portion, or none of the qualified nonfederal service.

Q3. I am a current NASA General Schedule employee and have some nonfederal experience that meets the definition of *period of qualified nonfederal service* for the new enhanced leave incentive. May that experience be counted as service for leave accrual purposes?

A3. No. That enhanced leave provision applies only to *newly appointed employees*—individuals appointed to NASA after the date on which the legislative authority can be exercised (July 8, 2004). It cannot be applied retroactively to NASA employees who were appointed before that date. There are a few limited exceptions to the definition of “newly appointed employee” (e.g., employees in student employment programs, law clerks, certain temporary employees, and employees under provisional appointments) but in all cases the decision to credit nonfederal service for enhanced leave purposes must be made at the time the employee is newly appointed to the NASA position. [NOTE: See the next question, below, on a related point.]

Q4. I am considering accepting a Senior Executive Service (SES) position at NASA. How would the enhanced annual leave provision affect me?

A4. The annual leave enhancement provision in the NASA Flexibility Act of 2004 actually has two distinct, but similar, provisions. One is the feature that allows certain nonfederal experience to count as service for leave accrual purposes. The other provision stipulates that all NASA senior-level employees will accrue one day of annual leave for each full biweekly pay period worked. Senior-level employees are those who are SES, ST, SL, and those paid at rates exceeding the GS-15 step 10 level. This provision applies to current senior-level employees as well as newly-appointed senior-level employees.

Q5. I am a NASA General Schedule employee who had my leave accrual rate adjusted when I was appointed, based on the enhanced annual leave provision. If I leave NASA to accept a position in another Federal agency, will I retain my current leave accrual rate?

A5. The adjustment made to your leave accrual rate based on the NASA Flexibility Act of 2004 applies to you only while employed in NASA. For example, suppose that at the time you were appointed to NASA you were given an additional five years of accrual credit based on qualifying experience in the private sector. That would put you in the 6-hour annual leave category instead of the 4-hour annual leave category. If you left NASA two years later to take a position in a different Federal agency, your leave accrual rate would be adjusted to reflect only two years of creditable experience—which means you would be in the 4-hour annual leave category upon transferring to the other agency.

Q6. I am a NASA SES employee who had my leave accrual rate adjusted to the 8-hour category when I was appointed, based on the enhanced annual leave provision for senior-level employees. If I leave NASA to accept a position in another Federal agency, will I retain my current leave accrual rate?

A6. Yes you will, due to a provision of the Federal Workforce Flexibility Act of 2004, which was signed into law on October 30, 2004. This Act provides that all SES, ST, and SL employees will accrue annual leave at the rate of 1 day for each full biweekly pay period.

Q7. The Federal Workforce Flexibility Act of 2004 has a provision very similar to NASA's provision for enhanced annual leave for new hires. Are there differences?

A7. Yes, the Federalwide Act (for which implementing regulations were issued on April 29, 2005), differs in these respects:

- Unlike NASA's authority, OPM's regulations do not limit the qualifying experience to non-Federal (i.e. private sector) experience. An employee who is a retired member of the uniformed service may receive credit for any period of active military service during which he or she performed duties directly related to the position to which he or she is being appointed.
- The OPM regulations provide that an employee who transfers to another agency is entitled to retain his or her service credit for non-Federal or active duty work experience, provided the employee has completed 1 full year of continuous service with the appointing agency. NASA's statutory authority does not permit a NASA employee transferring to another agency to retain the service credit for non-Federal experience.

Q8. Since the new Federalwide authority for service credit for prior experience has flexibilities that NASA's authority lacks, can Centers authorize enhanced annual leave under the new authority?

A8. Yes.

Limited appointments to SES positions

Q1. I have been asked to “act” in an SES positions while my boss is away on a fellowship program. Under the provision in the NASA Flexibility Act of 2004 pertaining to limited appointments to SES positions, would I be entitled to a temporary promotion to the SES level while serving in this position?

A1. This authority is discretionary. There would not be an “entitlement” to a temporary promotion (a limited term SES appointment would be, in effect, a temporary promotion for a GS employee). However, this new provision would *allow* a limited term SES appointment as an alternative to simply detailing you to the SES position in your boss’s absence.

Q2. I understand that selection into the SES involves a fairly rigorous qualifications process. Does this process apply to limited term SES appointments?

A2. No, limited term SES appointments do not require competition.

Q3. If I serve on a limited term SES appointment, and another permanent SES position opens up, do I have to compete to be placed in that position?

A3. Yes. Service on a limited term SES appointment does not provide any type of conversion eligibility to a permanent SES appointment. You would follow the usual competitive process to be placed on a permanent SES appointment.

Qualifications Pay

Q1. What is the purpose of the qualifications pay authority?

A1. This authority provides a financial incentive for an employee to accept an assignment to a different position or a different set of duties, due to the employee’s unusually high or unique qualifications and/or the needs of NASA. Currently, when an employee moves to a different position (e.g., when being reassigned to a different organization), his or her pay is established in accordance with pay-setting regulations that allow little room for flexibility. Even if the employee is being reassigned at the request of management to address a critical need within the Agency, there is virtually no discretion in how the pay is set. The qualifications pay authority will permit an employee’s pay to be adjusted at a higher step than it would otherwise be set, provided the situation meets the conditions for using the qualifications pay authority. .

Q2. What criteria must be met to before an employee’s pay can be adjusted based on this authority?

A2. Approval of qualifications pay must be based on written documentation that:
(1) the competencies possessed by the employee and needed for the position are critical;

(2) the competencies are difficult to obtain; and (3) the breadth of the individual's competencies exceed that of other employees who could be logical candidates for the position.

Q3. If I must leave a position for which I am receiving qualifications pay—through no fault of my own—before I have completed the 1-year service requirement, how will my pay be determined in the new position?

A3. By law, qualifications pay cannot be retained or used to set pay when an employee moves to another position for which it is not authorized *unless* the employee has completed the 1-year service requirement. Therefore, if an employee moves to another position (either voluntarily or involuntarily) before completing the 1-year service requirement, pay will be set based on the constructed rate of pay the employee would have received had he or she not received the qualifications pay. This includes any within grade increases the employee otherwise would have received. Further, the employee's rate of pay may be set at a higher rate, if he or she is eligible for a higher rate of pay based on some other authority, e.g., a previously earned highest previous rate. Note, however, if the move to the new position is through adverse action procedures due to poor performance or misconduct, the rate of pay in the new position will be determined by the deciding official in that action and may be lower than the rate the employee would have received had he or she not received qualifications pay.

Q4. Can qualifications pay be granted to an employee in connection with a detail?

A4. No. An employee does not change his/her position of record in connection with a detail, and details do not provide a basis for changing an employee's rate of pay.

NASA Excepted Appointments (NEX)

Q1. What has been NASA's use of these appointments?

A1. The Space Act gives NASA the authority to appoint and pay up to 425 employees under this special authority. Historically, NASA has been very conservative in its use of the authority, restricting it to cases where "regular" civil service authorities could not be used or were inadequate. The Administrator retained all authority. Recently, some decisions under this authority have been delegated to Center Directors, who may use NEX to accomplish certain short-term or project needs. As of December 2003, there were over 130 NEX employees on NASA's roles. The predominant usage is for scientific, engineering, information technology, and professional administrative positions.

Q2. I have an employee who is at the top step of her grade, and I really want to retain her. Can I give her an NEX appointment to increase her salary?

A2. The authority is intended for use when other means are unavailable or inadequate. Options for your situation would be performance awards or, if the employee is receiving other job offers or is planning to retire, a retention allowance. You might consider as

well non-monetary incentives, such as a rotational assignment, a training or fellowship program, or the opportunity to work on a choice assignment.

THE NASA FLEXIBILITY ACT OF 2004

SCOPE OF PROVISIONS

The NASA Flexibility Act of 2004 provides flexibilities to enhance NASA's ability to attract new talent to the Agency as well as flexibilities for retaining critical talent and leveraging the workforce more effectively. Consequently, some provisions apply to new hires only while others apply only to current NASA employees. Several provisions are applicable to new hires and current employees. The scope of each provision is summarized in this chart. For further information or clarification regarding the applicability of any provision to a specific situation, contact your Human Resources Office

Provision	New Appointees or Transfers	Current NASA Employees
Enhanced Recruitment Bonus	X	
Enhanced Relocation Bonus	X (transfers)	X
Enhanced Retention Bonus		X
Redesignation Bonus	X (transfers)	
Term Appointment Authority	X	X
Pay Authority for Critical Positions	X	X
Extension of IPA Assignment Period	X*	X*
Distinguished Scholar Appointment Authority	X	X**
Travel and Transportation Benefits for New Hires	X	X (student trainee conversions)
Annual Leave Enhancement for New Hires	X	X (student trainee conversions)
Annual Leave Enhancements for senior-level employees	X	X
Limited Appointments to SES Positions	X	X
Qualifications Pay	X (transfers)	X
Science and Technology Scholarship Program	X	
Increase of the Maximum Rate of Pay for NEX employees	X	X

Notes:

* Individuals assigned to NASA under IPA agreements normally are detailed, not appointed. The new extension authority is applicable to individuals on current IPA assignments (to or from NASA) as well as individuals who are placed on new IPA assignments.

** The Distinguished Scholar Appointment authority generally would be used in recruiting external candidates; an individual hired under this authority is given a career or career-conditional appointment. Although employees who already have permanent status are not likely to be interested in converting to a new permanent appointment, the law does not preclude this.